

**UNITED STATES TAX COURT**  
**WASHINGTON, DC 20217**

RONALD E. BYERS,	)	
	)	
Petitioner,	)	
	)	
v.	)	Docket No. 22629-07.
	)	
COMMISSIONER OF INTERNAL REVENUE,	)	
	)	
Respondent	)	
	)	
	)	
	)	
	)	
	)	

**ORDER and DECISION**

The Eighth Circuit remanded this case to allow a recomputation of petitioner's deficiency to reflect "a business-expense deduction for his 2004 truck-lease payments." This Court then gave the parties an opportunity to explain how to do this. It entered a new decision on April 2, 2013. Petitioner moved to vacate that decision. We'll address each of his three arguments in order.

His first is that there is a typo in the column adjusting the failure-to-timely-pay addition to tax. Petitioner is right about this one.

He's not so successful in his second argument. He contends that the Court must throw out the entire failure-to-timely-pay addition because we have to compute that addition on "the amount shown as tax" on the return (i.e., in this case, the substitute return that the IRS prepared under IRC § 6020(b)), and yet that amount won't be the same after complying with the Eighth Circuit's remand as it was before.

This would be a remarkable result--negating the entire penalty for an indisputably late-paying taxpayer like petitioner if he wins even a penny's worth of reduction on appeal. But that's not what the Code says. Section 6651(c)(2) tells us that "[i]f the amount required to be shown as tax on a return is less than the amount shown as tax on such return, subsections (a)(2) and (b)(2) shall be applied by substituting such lower amount." And that's just what respondent did in computing the addition to tax under section 6651(a)(2) on remand--in recomputing the

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addition, he took the lower amount of tax which petitioner owed under the mandate and substituted it for the amount shown on the substitute return.

Petitioner's final argument is also misconceived. The deduction that the Commissioner conceded on appeal that petitioner could claim--a business-expense deduction for his truck-lease payments--is one that he can claim only to the extent that he *paid* it. See Grynberg v. Commissioner, 83 T.C. 255, 265-66 (1984). Petitioner seems to argue that the truck lessor miscalculated those payments. But he can't point to anything in the record that shows he actually *paid* the slightly higher amounts that he now seems to say he should have been charged.

It is therefore

ORDERED that petitioner's May 6, 2013 motion to vacate is granted in part and denied in part as explained above. It is

ORDERED and DECIDED that in the Court's April 2, 2013 decision, the row titled "Penalty (decrease in assessment)" under the column headed "6651(a)(2)" is corrected to read "(997.87)" instead of "(979.87)".

**(Signed) Mark V. Holmes**  
**Judge**

ENTERED: **MAY 22 2013**